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Supreme Court, U.S.

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**IN THE
Supreme Court of the United States**

October Term, 1971

No. 71-496

**CLARENCE WARD,
Petitioner,**

v.

**VILLAGE OF MONROEVILLE, OHIO
Respondent.**

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Ohio**

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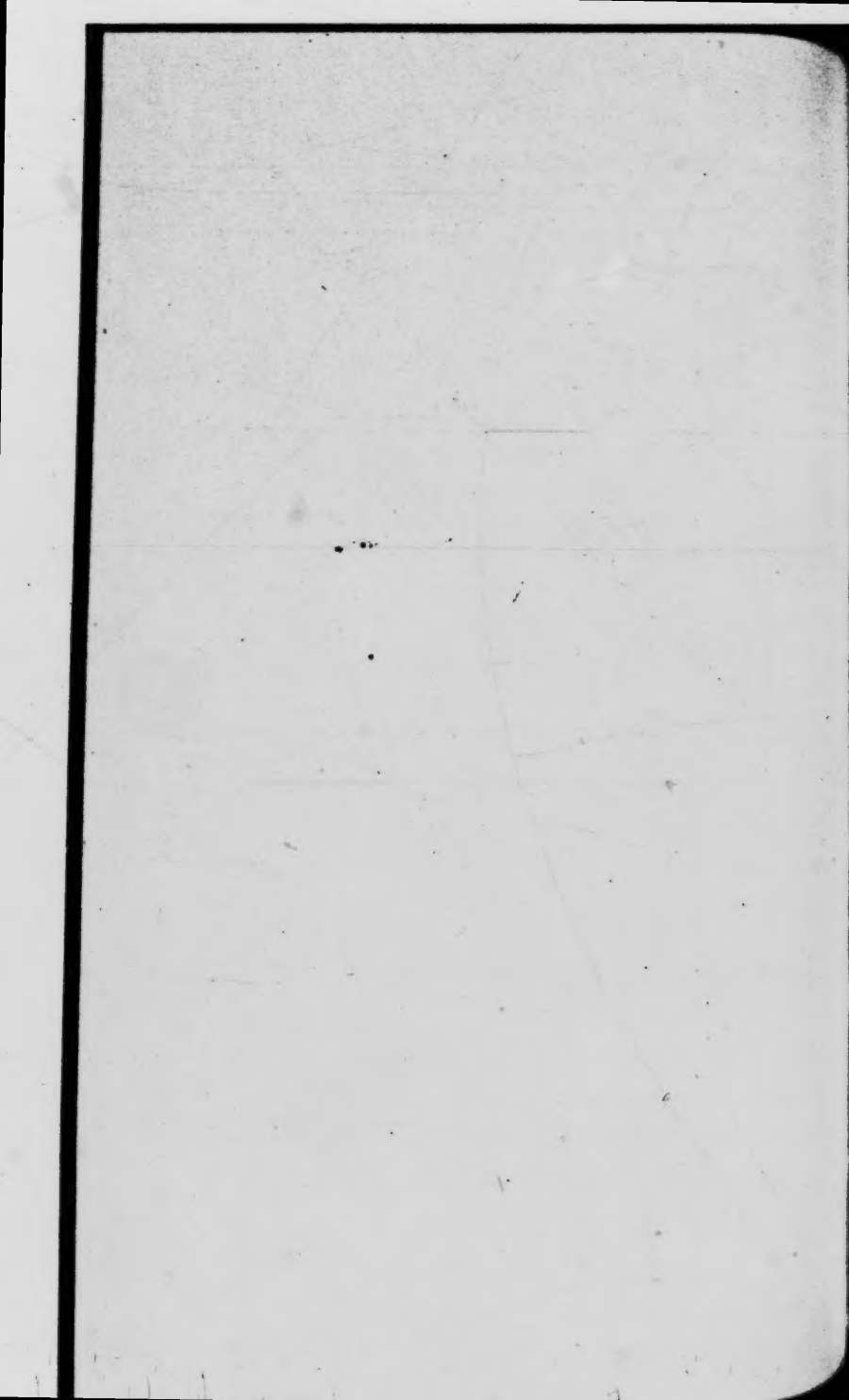


TABLE OF CONTENTS

REASONS FOR DENYING THE WRIT.....	1
I. The Decision of the Ohio Supreme Court Below Follows This Court's Holding in <u>Tumey v. Ohio</u> , 273 U.S. 510 (1927).....	1
II. The Ohio Statutory Provision for Disqualifying a Judge for Bias Is an Adequate Fair Trial Protection For Defendant.....	6
III. The Ohio Statutory Provision For De Novo On Appeal From a Mayor's Court Is an Adequate Fair Trial Protection For Defendant.....	7
IV. Defendant's Attack On the System of Mayor's Courts in Ohio Is Based upon a False Premise.....	9
CONCLUSION.....	11
APPENDIX:	
Ohio Constitution.....	12
Ohio Revised Code.....	12

TABLE OF AUTHORITIES

CASES

<u>Dugan vs. Ohio</u> , 277 U.S. 61 (1928).....	2,5
<u>Monroeville v. Ward</u> , 27 Ohio St. 2d 179 (1971).....	6,7
<u>Tumey v. Ohio</u> , 273 U.S. 519 (1927)...	1,2,4,5,6
<u>State ex rel Williams vs. Reffis</u> , 102 O. App. 412, 140, N.E. 2d 901 (1956).....	5

CONSTITUTIONS

Constitution of the United States, Fourteenth Amendment.....	2,7
Constitution of the State of Ohio, Article IV, Section 1.....	4

STATUTES

Ohio Revised Code:	
Sec. 731.13.....	10
Sec. 737.15.....	10
Sec. 737.171.....	10
Sec. 1905.01.....	4
Sec. 1905.22.....	8
Sec. 1905.22.....	8
Sec. 2937.20.....	7
Sec. 2945.17.....	5

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REASONS FOR DENYING THE WRIT.

- I. THE DECISION OF THE OHIO SUPREME COURT
BELOW FOLLOWS THIS COURT'S HOLDING IN
TUMEY v. OHIO, 273 U.S. 510 (1927).

The question presented in defendant's
petition may be resolved by an examination

of two cases decided by this Court. This Court held that a mayor who received any portion of the fine or court costs levied in mayor's court violated the defendant's right to a fair trial, under the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution. Tumey v. Ohio, 273 U.S. 510 (1927). This Court also held that a mayor who was paid from a municipality's general fund did not violate the due process of law requirement, even though the convicted party paid his fine and court costs into the same general fund from which the mayor's salary was paid. Dugan v. Ohio, 277 U.S. 62 (1928).

This Court gave a secondary reason for finding that due process had been offended by the mayor's court in Tumey, supra. Mayor's courts were given jurisdiction over offen-

ders who were apprehended outside of the municipality's corporation limits. This extension of normal venue and jurisdiction was coupled with an extremely high rate of fines for offenders as a means of encouraging small municipalities to go outside of their corporate boundaries to apprehend and convict violators of the prohibition act. The high rate of fines encouraged the mayors to convict offenders, in order to recoup the cost of conducting investigations and making raids outside of the corporation limits.

This Court condemned this extension of jurisdiction of mayor's courts in the following terms:

"The statutes were drawn to stimulate small municipalities in the country part of counties in which there are large cities, to organize and maintain courts to try persons accused

of violations of the prohibition act everywhere in the county." Tumey, supra, at 533.

This clear condemnation of a novel situation was accompanied by an equally clear statement of approval of the normal operation of mayor's courts:

"It is, of course, so common to vest the mayor of villages with inferior judicial functions that the mere union of the executive power and the judicial power in him cannot be said to violate due process of law." Tumey, supra, at 534.

The mayor's court in Ohio has an inferior judicial function, within the purview of Tumey. The Ohio legislature is empowered to establish courts inferior to the Ohio Supreme Court, under the provision of the Ohio Constitution, Article IV, Section 1. The Ohio legislature has adopted R.C. 1905.01, establishing mayor's courts. Under R.C. 1905.01, a mayor is disqualified

from hearing a criminal case in which the accused is entitled to a jury trial. State ex rel Williams v. Ferris, 102 O. App. 412, 140 N.E. 2d 901 (1956). Since any potential fine of more than \$50.00, or, any potential jail sentence entitles an accused to a jury trial under the provisions of R.C. 2945.17, the mayor's court has a jurisdiction limited to violations of ordinances that carry a maximum penalty of a \$50.00 fine and no jail sentence.

In considering this Court's holdings in Tumey and Dugan, in the light of the limited jurisdiction of Ohio mayor's courts, the Ohio Supreme Court below rendered the following majority opinion:

"We are of the opinion that even though the revenue produced from a mayor's court provides a substantial portion of a municipality's funds, such fact does not mean that a mayor's impartiality is so diminished thereby

that he cannot act in a disinterested fashion in a judicial capacity. The same may be said in connection with a mayor's interest in law enforcement within the municipality." Monroeville v. Ward, 27 Ohio St. 2d 179 (1971), at 185.

If the Ohio Supreme Court did not correctly follow this Court's holding in Tumey, as applied to the facts below, it might be grounds for reversal in the instant case, but it should not be grounds for abolishing all mayor's courts in Ohio. The Respondent submits, however, that the decision of the Ohio Supreme Court below correctly follows this Court's holding in Tumey.

II. THE OHIO STATUTORY PROVISION FOR DISQUALIFYING A JUDGE FOR BIAS IS AN ADEQUATE FAIR TRIAL PROTECTION FOR DEFENDANT.

Although the Ohio Supreme Court refused to abolish mayor's courts, the majority opinion below pointed out that the interest, bias, prejudice or disquali-

fication of an individual mayor would be grounds for the appointment of another judge to hear the case, if the defendant filed an affidavit asserting the disqualification under the terms of R.C. 2937.20. Monroe-ville v. Ward, supra, at 184. R.C. 2937.20 protects an individual from a mayor's court that has a mayor who has the disabilities alleged by the defendant herein, while allowing the system to continue to function as it was designed to by the legislature.

III. THE OHIO STATUTORY PROVISION FOR TRIAL DE NOVO ON APPEAL FROM A MAYOR'S COURT IS AN ADEQUATE FAIR TRIAL PROTECTION FOR DEFENDANT.

If it appears during the course of a trial that a particular defendant is not receiving the fair trial that is guaranteed by the Fourteenth Amendment to the United States Constitution, the defendant has the right to appeal from the decision

of the mayor's court to a county court or a municipal court for a trial de novo, under the provisions of R.C. 1905.25 and 1905.22. If mayor's courts were abolished in Ohio, the only courts with jurisdiction to handle traffic violations would be municipal courts and county courts. The defendant already has the right to appeal to these courts for a trial de novo, from a decision in the mayor's court. The only effect of abolishing mayor's courts would be to make all persons go to the expense and trouble of traveling to a municipal court or a county court to have their traffic citation adjudicated. Respondent submits that the existing right to a trial de novo in a county court or a municipal court is a sufficient fair trial protection for a defendant, without abolishing all mayor's courts.

IV. DEFENDANT'S ATTACK ON THE SYSTEM OF
MAYOR'S COURTS IN OHIO IS BASED UPON
A FALSE PREMISE.

Much of the case for the defendant is based upon the false premise that a mayor is so interested in ingratiating himself with the electorate by high fine revenues and low taxes that the mayor cannot be fair and impartial in his adjudication of traffic cases. The facts of political life are exactly the contrary.

The election for mayor of a village is a bi-partisan election. The office of mayor carries a rate of compensation that varies from community to community, but usually amounts to several hundred dollars per annum. Village Council must approve appointments made by the mayor and must fix all compen-

sation for employees of the municipality.¹

Pursuant to R.C. 737.171, the mayor can remove the chief of police only after a public hearing before village council, with a two-thirds majority of council concurring in the removal.

The legislative authority guards its prerogative very jealously, and the defendant grossly misrepresents the facts of political life if he is asking this Court to believe the mayor runs a village.

1-"Each village shall have a marshal, designated chief of police, appointed by the mayor with the advice and consent of the legislative authority..."
Revised Code Section 737.15.

"The legislative authority of a village shall fix the compensation and bonds of all officers, clerks, and employees of the Village..."
Revised Code Section 731.13.

The fact is that the mayor does not convict innocent traffic offenders, just because he is worrying about re-election. There simply are neither political plums nor financial plums to be picked in a small municipality in the office of mayor.

CONCLUSION

This Court should deny the writ of certiorari in this case since the allegations relate to only one specific mayor's court and since the statutory protections, if the defendant avails himself of their protection, are more than sufficient to assure a fair trial.

Respectfully submitted,

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APPENDIX

OHIO CONSTITUTION

Article IV, Section 1 The Judicial Power.

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, and such other courts inferior to the supreme court as may from time to time be established by law.

OHIO REVISED CODE

Sec. 731.13 Compensation and Bonds of Village Officers and Employees.

The legislative authority of a village shall fix the compensation and bonds of all officers, clerks, and employees of the village...

Sec. 737.15 Appointment of Village Marshal.

Each village shall have a marshal, designated chief of police, appointed by

the mayor with the advice and consent of the legislative authority of the village...

Sec. 737.171 Suspension or Removal of a
Member of a Village Police
Department.

When the mayor of a village has reason to believe a duly appointed marshal, deputy marshal, or policeman, night watchman, or special policeman of the village has been guilty of incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance in the performance of his official duty, he shall file with the legislative authority of the village written charges against such person setting forth in detail the reason therefor and immediately serve a true copy thereof upon

the person against whom they are made.

Charges filed under this section shall be heard at the next regular meeting of the legislative authority occurring not less than five days after the date such charges have been served on the person against whom they are made. The person against whom such charges are filed may appear in person and by counsel at such hearing, examine all witnesses, and answer all charges against him.

At the conclusion of the hearing, the legislative authority may dismiss the charges, suspend the accused from office for not more than sixty days, or remove the accused from office.

Action of the legislative authority removing or suspending the accused from office requires the affirmative vote of two-thirds of all members elected thereto.

In the case of removal from office the person so removed may appeal on questions of law and fact the decision of the legislative authority to the court of common pleas of the county in which the village is situated. Such appeal shall be taken within ten days from the date of the finding of the legislative authority.

Sec. 1905.01 Jurisdiction in Ordinance
Cases and Traffic Violations.

In all municipal corporations not having a police court and not being the site of a municipal court nor a place where Portage county municipal court sits as required pursuant to section 1901.021 of the Revised Code or by designation of the judges pursuant to section 1901.021 of the Revised Code, the mayor of such municipal corporation has jurisdiction to hear and determine any prosecution for the violation

of an ordinance of the municipal corporation, and has jurisdiction in all criminal causes involving moving traffic violations occurring on state highways located within the boundaries of the municipal corporation, subject to the limitations of sections 2937.08 and 2938.04 of the Revised Code.

In keeping his docket and files, the mayor shall be governed by the laws pertaining to county courts.

Sec. 1905.22 Appeals.

Appeals from a mayor's court may be taken to the municipal court or county court having jurisdiction within the municipal corporation.

Sec. 1905.25 Trial De Novo on Appeal.

An appeal from the mayor's court to the municipal court or county court shall proceed as a trial de novo.

Sec. 2937.20 Procedure in Disqualification
of Inferior Court Judge.

When a magistrate or a judge of a court inferior to the court of common pleas is interested in a cause pending before him, or is related to or has a bias or prejudice either for or against a party to such cause or to his counsel, or is otherwise disqualified to sit in such cause, on the filing of an affidavit of such party or his counsel, setting forth the fact of such interest, relationship, bias, prejudice, or disqualification, the clerk or deputy clerk of such court, or such magistrate, shall enter the filing of such affidavit on the docket in said cause, and, forthwith notify the presiding judge, or the chief justice of the court of common pleas, or if there is no such officer, then a judge of the court of common pleas or if such judge is

not available then a judge of the probate court of such county, who shall proceed without delay to examine into said affidavit, and if he finds from all the evidence that such interest, relationship, bias, prejudice, or disqualification exists, he shall designate another magistrate of the township or county, or another judge of said inferior court, or the court of common pleas to hear and determine said cause. The judge or magistrate so designated shall proceed to try such cause. Such affidavit must be filed not less than twenty-four hours before the time set for the hearing of such cause, unless such filing is unavoidably prevented. This section applies to criminal and civil proceedings.

Sec. 2945.17 Trial by Jury.

At any trial, in any court, for the

violation of any statute of this state, or of any ordinance of any municipal corporation, except in cases in which the penalty involved does not exceed a fine of fifty dollars, the accused has the right to be tried by a jury.